

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

## HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that Engrossed Senate Bill 19 be amended to read as follows:

- 1           Page 12, between lines 30 and 31, begin a new paragraph and insert:  
2           "SECTION 7. IC 6-3-1-34.5, AS ADDED BY P.L.211-2007,  
3           SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
4           UPON PASSAGE]: Sec. 34.5. (a) Except as provided in subsection (b),  
5           "captve real estate investment trust" means a corporation, a trust, or an  
6           association:  
7               (1) that is considered a real estate investment trust for the taxable  
8               year under Section 856 of the Internal Revenue Code;  
9               (2) that is not regularly traded on an established securities market;  
10              and  
11              (3) in which more than fifty percent (50%) of the:  
12                  (A) voting power;  
13                  (B) beneficial interests; or  
14                  (C) shares;  
15              are owned or controlled, directly or constructively, by a single  
16              entity that is subject to Subchapter C of Chapter 1 of the Internal  
17              Revenue Code.  
18              (b) The term does not include a corporation, a trust, or an  
19              association in which more than fifty percent (50%) of the entity's voting  
20              power, beneficial interests, or shares are owned by a single entity  
21              described in subsection (a)(3) that is owned or controlled, directly or  
22              constructively, by:  
23                  (1) a corporation, a trust, or an association that is considered a  
24                  real estate investment trust under Section 856 of the Internal

Revenue Code **and is not a captive real estate investment trust (as defined by subsection (a));**

(2) a person exempt from taxation under Section 501 of the Internal Revenue Code; ~~or~~

(3) a real estate investment trust that:

(A) is intended to become regularly traded on an established securities market; and

(B) satisfies the requirements of Section 856(a)(5) and Section 856(a)(6) of the Internal Revenue Code under Section 856(h) of the Internal Revenue Code;

**(4) a qualified foreign entity; or**

**(5) a listed Australian property trust.**

(c) For purposes of this section, the constructive ownership rules of Section 318 of the Internal Revenue Code, as modified by Section 856(d)(5) of the Internal Revenue Code, apply to the determination of the ownership of stock, assets, or net profits of any person.

**(d) As used in this section, "qualified foreign entity" means a corporation, trust, association, or partnership that is organized outside the laws of the United States and satisfies the following criteria:**

**(1) At least seventy-five percent (75%) of the entity's total asset value at the close of its taxable year is represented by real estate assets (as defined by Section 856(c)(5)(B) of the Internal Revenue Code, including shares or certificates of a beneficial interest in any real estate investment trust), cash and cash equivalents, and United States government securities.**

**(2) The entity:**

**(A) is not subject to taxation on amounts distributed to its beneficial owners; or**

**(B) is exempt from entry level taxation.**

**(3) The entity annually distributes at least eighty-five percent (85%) of its taxable income (as computed in the jurisdiction in which it is organized) to the holders of its shares or certificates of a beneficial interest.**

**(4) Either of the following applies to the entity:**

**(A) Not more than ten percent (10%) of:**

**(i) the voting power; or**

**(ii) the value of the entity;**

**is held directly, indirectly, or constructively by a single entity or individual.**

**(B) The shares or beneficial interests of the entity are regularly traded on an established securities market.**

**(5) The entity is organized in a country that has a tax treaty with the United States.**

**(e) As used in this section, "Australian property trust" means either of the following:**

- 1           **(1) An Australian unit trust registered under the Australian**  
2           **Corporations Act in which the principal class of units is listed**  
3           **on a recognized stock exchange in Australia and is regularly**  
4           **traded on an established securities market.**  
5           **(2) An entity organized as a trust in which a listed Australian**  
6           **property trust owns or controls, directly or indirectly, at least**  
7           **seventy-five percent (75%) of the voting power or value of the**  
8           **beneficial interests or shares in the trust."**

9           Renumber all SECTIONS consecutively.

(Reference is to ESB 19 as printed February 22, 2008.)

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Representative Avery